

BEFORE THE INDIANACASE REVIEW PANEL

In The Matter of D.C.)	
Petitioner)	
)	
and)	CAUSE NO. 110921-78
)	
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

The Petitioner, D.C., attended Bowman Leadership Academy (Bowman) until he enrolled at Merrillville High School (Merrillville) for the 2011-2012 school year. On July 12, 2011, Petitioner's great aunt (Guardian) completed the student's portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) requesting a waiver under IHSAA Rule 17-8.1 or Rule 17-8.5 as Petitioner's transfer was without a corresponding change of residence under Rule 19-6.2.

On July 27, 2011, Bowman completed its portion of the Transfer Report as the sending school and recommended Petitioner receive ineligible status under Rule 19-4 and commented that the transfer was athletically motivated. On August 1, 2011, Merrillville, the receiving school, completed its portion of the Transfer Report and recommended that Petitioner receive full eligibility.

On August 15, 2011, the IHSAA Assistant Commissioner Searcy concluded that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence, and determined Petitioner to have limited eligibility at Merrillville for 365 days from the date of enrollment at Merrillville. On August 23, 2011, the Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility. On September 2, 2011, the IHSAA Review Committee upheld the Commissioner's determination that Petitioner receive limited eligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ on September 21, 2011. On September 26, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On October 7, 2011, the CRP held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

FINDINGS OF FACT

1. At Bowman, Petitioner participated in varsity football and varsity track during his freshman and sophomore years.
2. While at Bowman, Petitioner was enrolled in the gifted program, took AP courses and received good grades.
3. Bowman did not provide bus service for its students.
4. During his sophomore year at Bowman, following a job change by his step father with a resulting change in work hours and his mother's night shift job schedule, Petitioner experienced difficulties in getting reliable transportation to school.
5. Around June 9, 2011, a Petition for Appointment of a Guardian of the Person Over Minor was filed with the Lake Superior Court Juvenile Division requesting Delpha Roberts, Petitioner's great aunt and who resides in Merrillville, Indiana, be appointed the guardian of Petitioner.
6. Prior to enrolling at Merrillville, a public school located a few blocks from Ms. Roberts' residence, Petitioner moved to Merrillville, Indiana to live with Ms. Roberts.
7. Petitioner began attending school at Merrillville at the beginning of the 2011-12 school year as a junior.

¹ The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Six members were present at the meeting, including Mr. Pat Mapes (chairperson), Mr. Matthew Rager, Mr. Earl Smith, Mr. Ed Baker and Ms. Dana Cristee. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

8. On July 12, 2011, Petitioner's Guardian completed the student's portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) requesting a waiver under IHSAA Rule 17-8.1 or Rule 17-8.5 as Petitioner's transfer was without a corresponding change of residence under Rule 19-6.2.
9. On July 27, 2011, Bowman completed its portion of the Transfer Report as the sending school and recommended Petitioner receive ineligible status under Rule 19-4 and commented that the transfer was athletically motivated.
10. On August 1, 2011, Merrillville, the receiving school, completed its portion of the Transfer Report and recommended that Petitioner receive full eligibility.
11. On September 1, 2011, guardianship of Petitioner was awarded to Delpha Roberts.
12. On August 15, 2011, the IHSAA Assistant Commissioner Searcy concluded that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence, and determined Petitioner to have limited eligibility at Merrillville for 365 days from the date of enrollment at Merrillville.
13. On August 23, 2011, the Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility.
14. On September 2, 2011, the IHSAA Review Committee upheld the Commissioner's determination that Petitioner receive limited eligibility.
15. The Petitioner timely sought review by the CRP of the Review Committee's ruling.

CONCLUSIONS OF LAW

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the Respondent has rendered a final determination of

student ineligibility for one year, until April 17, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.

3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," *I.C. 20-26-14-6(c)(2)*, not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See I.C. 20-26-14-6(c)(1)*. If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, *I.C. 20-26-14-7(c)*, as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.
5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." *Id.* citing *Dep't of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
7. Under IHSAA Rule 19-4, any student who transfers from one school to a new school for primarily athletic reasons will not be eligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school.
8. Under IHSAA Rule 19-5, a student who transfers with a corresponding change of residence by the student's parents or guardian may be declared immediately eligible at the new school provided there is a bona fide change of address.
9. No substantial evidence to support a finding that the transfer was primarily for athletic reasons: although Bowman commented on the Transfer Report that Petitioner's transfer was primarily for athletic reasons, there is no evidence to support this assertion. There is no evidence in the record that Petitioner "shopped" other schools or that there were communications between Merrillville and the Petitioner prior to the move to suggest Petitioner's transfer was related to athletics. Although Petitioner played two sports at the varsity level while at Bowman, the record is without substantial evidence to support a finding under IHSAA Rule 19-4.
10. No substantial evidence to support a finding that the transfer was without a change of residence by parents: After enrolling at Bowman, following a job change by his stepfather, Petitioner had no reliable and safe transportation to school. He arrived late on many occasions. Petitioner finished his sophomore year at Bowman. His mother chose to transfer her legal rights to her aunt, the great aunt of Petitioner. The great aunt lives only a few blocks from Merrillville High School. Papers were filed to award guardianship to Petitioner's aunt on June 9, 2011. Petitioner did not enroll in Merrillville until later in the summer. Guardianship was effective due to the scheduling of the court on September 1, 2011. Petitioner moved to his new guardian's residence in Merrillville, Indiana so he could begin the school year at Merrillville and have a reasonable chance of walking to school and arriving on time. The guardianship was formally effective on September 1, 2011; however, all actions by the Petitioner and his family to effectuate the change of guardianship process were completed on June 9, 2011 prior to his enrollment at

Merrillville later in the summer. Substantial evidence exists in the record that supports Petitioner's move to Merrillville was as a result of a guardian being appointed and the resulting change of residence was bona fide.

11. Therefore, the IHSAA decision to provide Petitioner with limited eligibility for one year was arbitrary and capricious and was not supported by substantial evidence. Therefore, the IHSAA Review Committee's determination that Petitioner transferred schools without a change of residence by his parents/guardian under IHSAA Rule 19-5 is hereby nullified as substantial evidence exists to support the Petitioner's transfer under Rule 19-5. The Petitioner is granted FULL ELIGIBILITY under Rule 19-5.

ORDER

The IHSAA Review Committee order is hereby **NULLIFIED** by a vote of 4-1.
Petitioner is granted **FULL ELIGIBILITY** as of the date of this Order.

DATE: October 13, 2011

/s/Patrick W. Mapes
Pat Mapes, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.